IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.466 OF 2004

Shri Ahil K. Dalal ... Petitioner

v/s

Jaico Investment ... Respondents

Ms Sonal i/b Mr A. Bakshi for Petitioner.

Ms S. Srikrishna i/b Mr A.G. Purohit for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 29TH AUGUST 2005.

P.C. :-

1. By this petition, the petitioner challenges the award made by the Arbitral Tribunal of the Bombay Stock Exchange dated 15th June 2004 directing the petitioner to pay an amount of Rs.41,53,153/-. The challenge to the award is that the award suffers from total non-application of mind to the relevant aspects of the matter. It is submitted that the respondents, who are stock brokers, had made a counter claim against the petitioner. One of the items in the claim related to loss suffered by the respondents in relation to the transaction of 1,00,000 shares of KMF. It is further submitted that the respondents had submitted the counter claim on the basis of the record. One of the item of the counter claim was that an amount of Rs.20,74,083.83 was claimed by the respondents as the amount due to them. That claim was made on the basis of entries in the general ledger maintained by the respondents for the year 1994-95. That ledger entry itself shows that the amount of Rs.20,74,083.83 was arrived at by including an amount of Rs.10,00,000/- which was shown to be a short term loan given by the respondents to the petitioner on 29th March 1995. It is submitted that even if the Arbitral Tribunal accepted the claim made on the basis of the general ledger of the respondents in entirety,

still the award could have been made for an amount of Rs.10,74,083.83, in no circumstances, the amount of Rs.10,00,000/- which was shown as short term loan could have been awarded by the Arbitrators because the Arbitral Tribunal had no jurisdiction over that amount. It is submitted that the Arbitral Tribunal has by the award awarded an amount of Rs.15,00,000/- plus an amount of Rs.2,06,275/-, totalling to Rs.17,06,275/-. It is submitted that for arriving at this amount, the transaction of 1,00,000 shares of KMF referred to was not relevant for considering the amount in relation to which an award is to be made in favour of the respondents because the amount of Rs.16,00,000/- was claimed by the petitioner from the respondents in relation to the transaction of 1,00,000 shares of KMF. It is submitted that in the arbitration proceedings, if it is the case of the respondents that this transaction never took place, then the Arbitral Tribunal could have rejected the claim of the petitioner on the basis of those transactions and in no case, that claim could have been taken into consideration in making an award in favour of the respondents.

2. The learned counsel appearing for respondents, on the other hand, submits that the claim has been awarded on the basis of the entries in the general ledger. Undoubtedly, the general ledger shows that

Rs.10,00,000/- were given as short term loan by the respondents to the petitioner, but according to the learned counsel, that has been adjusted subsequently and Rs.20,00,000/- was shown as payable by the petitioner to the respondents on account of transactions in security. The learned counsel, however, fairly stated that this information though given before the Arbitral Tribunal orally, is not reflected in the award and this explanation was also not given in writing before the Arbitral Tribunal.

4. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that the respondents were claiming an amount of Rs.20,74,083.83 as a counter claim i.e. item No.6. Perusal of the written statement filed by the respondents shows that the respondents were claiming an amount of Rs.20,74,083.83 in following terms :-

> "The Respondent says that the Respondent maintained the account of the Applicant in their account books, which is kept in regular and ordinary course of the business. The Respondent says that at the foot of the Applicant account in account books of the Respondent for the year 1995-96 a sum of Rs.20,74,083.83 is admittedly due and payable

by the Applicant to the Respondent. Hereto annexed and marked as Exh.'1' is copy of the statements of the account of the Applicant in the account books of the Respondent for the year 1994-95 and 1995-96."

. Perusal of the statements of account which are Exh.'1' shows that at the end of the year 1994-95, an amount of Rs.29,19,556.90 is shown as due. This includes an amount of Rs.10,00,000/- which is shown to have been given as loan by the respondents to the petitioner on 29th March 1995. The statement of account for the year 1995-96 shows that at the end of that year, an amount of Rs.20,74,083.83 is due from the petitioner to the respondents. This obviously includes the amount of Rs.10,00,000/- which is given as short term loan. Now, this counter claim for Rs.20,74,083.83 is dealt with by the Arbitrators in following terms in their award :-

"Counter Claim No.6 :- One of the major item under this head is the loss suffered by the Respondent in the books of the Applicant in respect of the dealing of one lakh shares of KMF amounting to Rs.15,00,000/-. We have considered the submissions of both the parties and gone through the details and records

produced before us. In our considered opinion, the same has been deliberately corroborated to accommodate the above loss. The bills issued by the Applicant in this respect does not show consistency. In our opinion, these entries have been passed by the applicant deliberately to show loss in the account of the Respondent. hence, the counter claim of the Respondent in this respect is allowed. Out of the remaining claim under this head, we are of the opinion that the Respondent deserves a relief of Rs.2,06,275/- in respect of transaction of Patni Engineering. In conclusion, we allow the counter claim of the Respondent to the extent of Rs.17,06,275/- under the head of other claims."

. Perusal of the discussion shows that the Arbitrators have totally misconstrued the claim made by the respondents. The discussion of Rs.15,00,000/- was in relation to payment of KMF shares and it was totally irrelevant. That discussion would have been relevant for rejecting the claim made by the petitioner against the respondents, the Arbitrators in no event could have awarded that amount to the respondents. The Arbitrators have also not considered that out of the amount of

Rs.20,74,083.83, Rs.10,00,000/- was admittedly the amount of short term loan over which the Arbitral Tribunal could not have any jurisdiction. Perusal of the award shows that the award suffers from total non-application of mind and therefore, the award is in breach of principles of natural justice. In this view of the matter therefore, the award is liable to be set aside. The award is accordingly set aside. Petition succeeds and is allowed. The respondents are directed to pay costs of this petition to the petitioner as incurred by the petitioner.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.